



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2011-0495; FRL-9909-35-Region 6]

#### **Approval and Promulgation of Implementation Plans; Texas; Revisions for Permitting of Particulate Matter with Diameters Less Than or Equal to 2.5 Micrometers (PM<sub>2.5</sub>)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on May 19, 2011. The May 19, 2011, SIP submission adopts revisions to the Texas General Air Quality Definitions and Permits by Rule (PBR) program consistent with certain federal rules implementing the 1997 and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). EPA finds that the Texas Prevention of Significant Deterioration (PSD) New Source Review (NSR) SIP meets all EPA PM<sub>2.5</sub> PSD SIP rules. These rules include permitting components such as the PM<sub>2.5</sub> precursors of sulfur dioxide and nitrogen oxides, condensables, significant emissions rates (SER), and increment. EPA is approving these actions under section 110 and part C of the Clean Air Act (CAA or the Act).

**DATES:** This final rule is effective on [Insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2011-0495. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, Air Planning Section (6PD-R), telephone (214) 665-2115, e-mail address [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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#### **I. Background**

The background for today's action is discussed in detail in our February 14, 2014 proposal (79 FR 8916). In that notice, we proposed to approve revisions to the Texas SIP at 30 TAC Sections 101.1 and 106.4 submitted on May 19, 2011, for the implementation of the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA also proposed to find that the Texas PSD NSR SIP met the PM<sub>2.5</sub> PSD requirements contained in the federal regulations as of December 9, 2013, including regulation of NO<sub>x</sub> and SO<sub>2</sub> as PM<sub>2.5</sub> precursors, regulation of condensables, and PM<sub>2.5</sub> increments.

## **II. Response to Comments**

We received comments from the Texas Industry Project (TIP) on our February 14, 2014 proposal. The comments we received can be accessed in their entirety from the [www.regulations.gov](http://www.regulations.gov) website (Docket No. EPA-R06-OAR-2011-0495). The TIP generally expressed support for our proposed rulemaking, but did request clarification on certain issues. Following is a summary of the comments submitted from TIP and EPA's response.

*Comment:* TIP requests that EPA acknowledge that ammonia is not regulated as a precursor for PM<sub>2.5</sub> for PSD permitting under the Texas SIP. The commenter also presented information about EPA's treatment of ammonia and volatile organic compounds (VOC) as precursors to PM<sub>2.5</sub> in the federal PSD Program. Specifically, the commenter referenced EPA's May 16, 2008 NSR PM<sub>2.5</sub> Implementation Rule; the lack of a significant emission rate for VOC or ammonia in the federal PSD rules at 40 CFR 51.166(b)(23)(i); and the definition of "regulated NSR pollutant" where VOC is presumed out and ammonia is not mentioned at 40 CFR 51.166(b)(49).

*Response:* As discussed below, EPA agrees with the commenter's conclusion that this approval action of the Texas PM<sub>2.5</sub> SIP will not result in regulating ammonia or VOCs as precursors to PM<sub>2.5</sub>. Federal rules do not require the Texas PSD program to regulate VOCs or ammonia as precursors to PM<sub>2.5</sub>.

In the May 16, 2008 NSR PM<sub>2.5</sub> Implementation Rule, the EPA finalized revisions to the PSD program to govern regulation of SO<sub>2</sub>, NO<sub>x</sub> and VOCs as regulated NSR pollutants. For purposes of PSD, SO<sub>2</sub> is a regulated NSR pollutant under all circumstances; NO<sub>x</sub> is presumptively regulated as an NSR pollutant, unless the State or EPA demonstrates that emissions of NO<sub>x</sub> from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and VOCs are presumptively not regulated as an NSR pollutant, unless the State or EPA demonstrates that emissions of VOCs from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations. *See* 40 CFR 51.166(b)(49)(i)(b)-(d), 52.21(b)(50)(i)(b)-(d). The EPA did not include ammonia as a regulated NSR pollutant for purposes of PSD.

As to nonattainment NSR, States were not required to regulate ammonia as a PM<sub>2.5</sub> precursor for a specific nonattainment area unless either the state or EPA provided a satisfactory demonstration that ammonia emissions from sources in a specific nonattainment area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations. *See* 40 CFR 51.165(a)(1)(xxxvii)(C)(4). However, the EPA clarified that "the action of any State identifying ammonia emissions as a significant contributor to a nonattainment area's PM<sub>2.5</sub> concentrations, or our approval of a nonattainment SIP doing so, does not make ammonia a regulated NSR pollutant for the purposes of PSD in any attainment or unclassifiable areas nationally." *See* 73 FR 28321, 28330.

Texas was therefore not required by the EPA to address ammonia in its PSD regulations and there is no indication that Texas intended to identify ammonia as a regulated NSR pollutant for purposes of PSD permitting for PM<sub>2.5</sub>. Texas also did not revise its PSD regulations to regulate VOCs as a PM<sub>2.5</sub> precursor, as neither Texas nor the EPA demonstrated that emissions of VOCs from sources in the State significantly contribute to PM<sub>2.5</sub> concentrations in the State. The EPA is approving the Texas SIP as regulating only SO<sub>2</sub> and NO<sub>x</sub> as PM<sub>2.5</sub> precursors for purposes of PSD permitting. No changes were made to our final rule as a result of this comment.

### **III. Final Action**

We are approving the May 19, 2011, submittal for the State of Texas revising 30 TAC Sections 101.1 (25), (75), (76), and (78) and 106.4(a)(1) and (a)(4) for the implementation of the 1997 and 2006 PM<sub>2.5</sub> NAAQS and non-substantive revisions to 30 TAC 106.4(a)(2) and (c) as proposed. We also find that the Texas PSD NSR SIP satisfies the PM<sub>2.5</sub> PSD requirements contained in federal regulations as of December 9, 2013. This action is being taken under section 110 and part C of the Act.

Also in this action we are making a ministerial revision to the Texas SIP to reflect a recent EPA final approval of the Texas PSD program. In Title 40 of the Code of Federal Regulations, Part 52, Section 52.2303, paragraph (a)(2) is corrected to reflect the January 6, 2014, Federal Register EPA final action (79 FR 551) that replaced two provisions of the Texas PSD Supplement, paragraphs (a) and (b) of Board Order 87-09.

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action

for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 16, 2014.

Ron Curry,  
Regional Administrator, Region 6.



40 CFR part 52 is amended as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart SS – Texas**

2. In § 52.2270 (c), the table titled “EPA APPROVED REGULATIONS IN THE TEXAS SIP”

is amended by revising the entries for Sections 101.1 and 106.4 to read as follows:

### **§ 52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State Citation	Title/subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Chapter 101 – General Air Quality Rules				
Subchapter A – General Rules				
Section 101.1	Definitions	04/20/2011	<b>[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]</b>	
* * * * *				
Chapter 106 – Permits by Rule				
Subchapter A – General Requirements				
* * * * *				

Section 106.4	Requirements for Permitting by Rule	04/20/2011	<b>[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]</b>	
* * * * *				

\* \* \* \* \*

3. In § 52.2303 is amended by adding paragraph (a)(1)(x) and revising paragraph (a)(2) to read as follows.

**§ 52.2303 Significant deterioration of air quality.**

(a) \* \* \*

(1) \* \* \*

(x) **[Insert date 30 days after date of publication in the Federal Register]** (as revised by the Texas Commission on Environmental Quality on April 20, 2011 and submitted on May 19, 2011) to address PSD permitting requirements for PM<sub>2.5</sub> promulgated by EPA on May 16, 2008, October 20, 2010, and December 9, 2013.

(2) The Prevention of Significant Deterioration (PSD) Supplement document, submitted October 26, 1987 (as adopted by the TACB on July 17, 1987) and revised on July 2, 2010, to remove paragraphs (7)(a) and (7)(b). See EPA's final approval action on January 6, 2014.

\* \* \* \* \*

[FR Doc. 2014-12474 Filed 05/29/2014 at 8:45 am; Publication Date: 05/30/2014]